

TIME RECEIVED

January 10, 2014 3:47:46 PM GMT+01:

REMOTE CSID

0227980724

DURATION

187

PAGES

4

STATUS

Received

09/01/2014 23:28

0227980724

MISSION OF VIETNAM

PAGE 01/04

PERMANENT MISSION OF THE
SOCIALIST REPUBLIC OF VIETNAM
to the United Nations Office,
the World Trade Organization
Other International Organizations at Geneva



MISSION PERMANENTE DE LA
REPUBLIQUE SOCIALISTE DU VIETNAM
auprès de l'Office des Nations Unies,
de l'Organisation Mondiale du Commerce
et des autres Organisations Internationales à Genève

30, Chemin des Corbillettes, 1218 Grand-Saconnex, Genève
Tel: (41 22) 798 24 85 / 791 85 40 Fax: (41 22) 798 07 24 E-mail: info@vnmission-ge.org

Ref: 04 /VNM.2014

Geneva, 10 January 2014

Dear Special Rapporteurs,

With reference to your letter ref. ALG/SO 214 (61-17) Assembly & Association (2010-1) dated 01.10.2013, regarding the Decree on "Management, Provision and Use of Internet Services and Information Content Online" (No. 72/2013/ND-CP, known as Decree 72), we thank you for your valuable spirit of constructive dialogue, consultation and cooperation with Viet Nam.

Regards the information you received and mentioned in the letter, further to our reply letter No. 425/VNM2012, concerned authorities of Viet Nam have looked into the issues and found that most of allegations sent to you appear to be inaccurate, particularly on two aspects below:

1. *The allegation on restrictions by the Decree 72 is inaccurate and baseless.*

The allegation that Article 20, Clause 4 of the Decree "prohibits individuals to provide general information on private websites, thus could prevent free exchange of information on social networking sites such as Facebook or Twitter", is inaccurate and biased. Article 20, Clause 4 does not prohibit individuals to provide "general information" but aims at providing definitions, characters and classifications of different types of networking sites and information to be managed by related authorities. Stipulations on the rights and responsibilities of Internet users in Article 10 and the rights and responsibilities of social-network users in Article 26 do not have any phrase or implication which is deemed to "prevent users of social networking sites to share or provide information". Stipulations on the prohibited activities in Article 5 of the Decree 72 do also not limit personal right to freedom of opinion and expression, and strictly follow Article 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Viet Nam is a party.

Mr. Frank La Rue,

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

Mr. Maina Kiai,

Special Rapporteur on the rights to freedom of peaceful assembly and of association.

Ms. Margaret Sekaggya,

Special Rapporteur on the situation of human rights defenders.

The allegation that Article 25, Clause 5 "can in practice lead to the operators of social networking sites exercising self-censorship and regulating postings that they deem to be opposing to Article 5 of the Decree" does lack of grounds also. In contrary, Clause 5 aims at separating the responsibilities between the operators and users of social networking sites. Specifically, the Clause stipulates that the operators must not actively provide to the public the information which is in contrary to Article 5, and that they are not held responsibility for the contents from the third party (i.e. supplied by the networking sites users). Because of not being held responsibility for the contents from the third party, organizations and enterprises providing social networking sites shall not have the rights or responsibilities to verify and remove material on their networks, and they only do so or prevent information which violate Article 5 when being requested by the competent authorities as stipulated in Article 25, Clause 6.

Other obligations of organizations and enterprises operating social networking sites under Article 25, Clauses 7, 9 strictly follow the existing laws of Viet Nam and current international laws and norms. Under the ICCR, each State Party undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, including the right to freedom of expression and opinion (Article 1, 2). At the same time, the ICCPR preserves the rights of State Parties to apply certain limitations in specific situations to require individuals and organizations for "respect of the rights or reputations of others" or for "the protection of national security or of public order or of public health or morals".

The stipulations of Article 25, Clause 9 on "registering, storing and managing information of the persons that establish personal websites and other information providers on social networks" aims at ensuring the management, providing and using Internet services and other information on the network in order to prevent swindling information and to protect interests of users at disputes or complaints. The requirement for providing information of users concerning acts of terrorism, criminal, violation of laws is of necessity for the investigations for criminals and offenders, and does follow all current international norms and practices. The registration, storage and management of personal information of the persons that establish personal websites and other information providers on social networks are required to ensure that individuals and organizations take responsibilities for the information that they provide. This is necessary to establish a safe and healthy networks and to protect national security, public order, health or morals as provided for in Clause 3 of Article 19 of ICCPR.

2. It can be confirmed that stipulations in the Decree 72 are in conformity with the obligations of Viet Nam under international laws and norms on human rights, especially the right to freedom of opinion and expression.

Internet is a society for Internet users, including transaction and exchange of information. Internet is also an open environment, allowing users to search and provide information in such a free manners that, without laws and regulations applied, it can easily be abused to undermined traditional culture, moral, public safety and national security.

Decree 72 was established to promote the Internet development in Viet Nam, further facilitate people to access and supply information, create equal business opportunities, ensure transparency, network safety and security, administration reforms with clearer divisions of responsibilities and coordination among relevant Ministries, agencies, local authorities, in order to ensure that Internet development shall serve the common interests of the whole society.

Decree 72 was also established with due considerations to its conformity to the Constitution, laws and its harmonization with other legal regulations in the existing laws of Viet Nam, including Laws on Press, Laws on Publication, Telecommunications Law and the Decree 25/2011/NĐ-CP of 06.04.2011 of the Government on "Detailing and guiding the implementation of a number of articles of the Telecommunications Law".

Decree 72 does hold the principle of "not hindering implementations of international treaties of which Viet Nam is a party". Article 4, Clause 7 of the Decree reads: "To intensify international cooperation in Internet on the basis of mutual benefits, conformity with Vietnam's law and the International Agreements to which the Socialist Republic of Vietnam is a signatory". Preparation of the Decree was made with utmost cares and considerations to strictly follow 1948 Universal Declaration of Human Rights (UDHR), 1966 International Covenant on Civil and Political Rights (ICCPR), especially the stipulations in Article 29 of the UDHR and Article 19, 20 of ICCPR.

Stipulations of the Decree do follow international norms which are universally applied in other countries, including those on freedom of expression and opinion. It can be seen that States all have laws and regulations to ensure the right to freedom of expression and opinion, freedom of press which are deemed to be suitable to their specific social situations. This is also noted in 1993 Vienna Declaration and Programme of Action that "all human rights are universal, indivisible", and that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind".

Article 2385 of the Criminal Law of the United States also prohibits any actions with "prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government...". Article 10 on freedom of expression of the "Convention for the Protection of Human Rights and Fundamental Freedoms" of the European Union stipulates that "the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary". In past few years, the events that some popular newspapers in Denmark and then France carried controversial cartoons of Muhammad did cause outrageous among Islamic community in the world. After the "Arab spring", "Occupy Wall Street", "Occupy London" movements, with rising concerns, several governments started applying necessary measures to prevent the abuse of social networking sites to call for assembling to overthrow governments. The "News of the World" phone-hacking scandal has led to the closure of this paper in the UK and the creation of a regulatory body through a Royal Charter for the press of the UK, with the authority to band permanently publication, apply fines or demand press agencies to apology for their wrong doings. Recently, the Media Development Authority (MDA) of Singapore, for ensuring the stability of a multi ethnic society, has released new regulations that all licensees of electronic newspapers have duty to remove material with the content that "undermines racial or religious harmony" within 24 hours following the MDA's directions.

The same as in other countries, Viet Nam has witnessed unwanted consequences by the exercises of absolute right to freedom of expression on Internet. In the economic field, just few rumors spreading online about the arrests of some top bankers made 430 stocks declined, foreign exchange rate of US dollar increased by 0.5% in a day, thus fomenting confusion in the stock market. Another example, in early 2013, nation-wide rumors of fake rice, leeches in

milk, or strange insects in eggs or noodles also made serious impacts to trademarks of several domestic enterprises and reputation of agriculture products of Viet Nam. One more example is that a girl student in Da Nang City was slandered and mud smeared that she committed suicide (and luckily she was rescued in time). Those are few examples of rumors and incorrect information on social networking sites that affect the political, economic security and personal safety. The motives of such information could be unintentional but some were obviously the plans and schemes to cause political, economic and security instability, seriously affecting the concerned individuals and organizations and make waves of discontent among public. In addition, copying freely contents of newspapers or works of the others on Internet in certain cases could also constitute the violate the copyrights.

All above evident reaffirms that no state considers that the right to freedom of expression and press is absolute. Communication in a society, including exchange on Internet via networking sites persons and organizations, entitles to freedom of expression but must also comply with laws and regulations. For Decree 72, individuals and organizations have the rights to supply, share information and exchange expression and opinions, and at the same time, take responsibilities before the laws for the information that they upload.

We once again reaffirm and assure you that the Decree 72 was established with due and serious considerations to existing laws and regulations of Viet Nam, suitable to current development requirements in Viet Nam, as well as to the obligations of Viet Nam for promotion and protection of human rights, especially the right to freedom of opinion and expression according to international norms and practices on human rights.

We hope that the above information and clarification would help to provide a more complete picture to the attention and concerns of you on the Decree 72 on "Management, Provision and Use of Internet Services and Information Content Online".

Please accept the assurances of our highest consideration.

Happy 2014 !



THANH T. NGUYEN
Ambassador, Permanent Representative